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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**


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REPUBLIC TECHNOLOGIES (NA), LLC  
and REPUBLIC TOBACCO LP,

Plaintiffs/Counter-Defendants,

*versus*THERESA M. GROSS d/b/a/ TEES  
CHEAP TOBACCO,

Defendant/Counter-Plaintiff.

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CIVIL ACTION NO. 1:20-CV-00390

**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

On January 5, 2021, the Court referred this case to the Honorable Zack Hawthorn, United States Magistrate Judge, for pretrial management. Doc. No. 7. On July 21, 2022, Judge Hawthorn recommended that the Court deny the *Motion for Entry of Order of Dismissal* (Doc. No. 16) filed by Plaintiffs Republic Technologies (NA), LLC and Republic Tobacco LP (together, “Republic”) because *pro se* Defendant Theresa Gross had alleged extant counterclaims. Doc. No. 39. On August 5, 2022, Republic timely filed its *Objection to Magistrate Judge’s Report and Recommendation Denying Republic’s Motion to Dismiss, or in the Alternative, Motion for More Definite Statement*. Doc. No. 41. After review, the Court overrules Republic’s objections and adopts Judge Hawthorn’s Report and Recommendation.

**I. Discussion**

Republic initially filed this action against Gross for trademark counterfeiting, trademark infringement, false designation of origin, and unfair competition. Doc. No. 1. In short, Republic alleged that Gross sold cigarette rolling papers bearing counterfeit Republic

trademarks. Gross's Answer denied the papers were counterfeit because she allegedly purchased them from Republic's licensed wholesaler. Doc. No. 6. Laboratory tests eventually proved the products' authenticity, so Republic filed the pending *Motion for Entry of Order of Dismissal* under Federal Rule of Civil Procedure 41(a)(2). Doc. No. 16. Gross objected to Republic's motion, however, and argued that the products' poor quality provided her viable counterclaims.

Seeking to dismiss the counterclaims and the case itself, Republic then filed a *Motion to Strike "Counter-Claim" from the Case Caption of the Answer [DE 6] and Defendant's Objection to Dismissal [DE 17]* on April 4, 2022. Doc. No. 27. On April 26, 2022, finding that Gross had expressed counterclaims under liberal *pro se* pleading standards, Judge Hawthorn denied Republic's motion to strike the word "counter-claim." Doc. No. 31. Accordingly, on May 3, 2022, the Magistrate Judge issued a new Scheduling Order naming Gross as Counter-Plaintiff and giving her thirty days to amend her complaint. Doc. No. 32. Thirty days passed, and Gross did not amend. Because Republic's Rule 41 Motion for Entry of Order of Dismissal remained pending, Judge Hawthorn then issued a Report and Recommendation that recommended denying it for the same reason he denied Republic's motion to strike the word "counter-claim." Doc. No. 39.

After review, the Court finds that Judge Hawthorn's factual findings and statements of law are correct. While the Court expresses no opinion whether Gross has stated a claim with enough particularity to survive a challenge under Federal Rule of Civil Procedure 12(b)(6), she has offered an extant counterclaim to avoid dismissal under Rule 41(a)(2). Because Gross is proceeding *pro se*, the Court will give her thirty more days from the date of this order to amend her counterclaims. Should that deadline pass without an amendment, Gross's case will be subject to *sua sponte* dismissal for want of prosecution. *See* FED. R. CIV. P. 41(b).

## II. Order

It is therefore **ORDERED** that the Report and Recommendation of the Magistrate Judge (Doc. No. 39) is **ADOPTED**. The *Motion for Entry of Order of Dismissal* (Doc. No. 16) filed by Plaintiffs Republic Technologies (NA), LLC and Republic Tobacco LP is **DENIED**.

**Signed this date**

**Aug 16, 2022**

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE